

REMARKS

Claims 15-37 are pending. Applicants acknowledge that the Examiner has renumbered claims 17-40, which were presented in Applicants' preliminary amendment filed with the present application, as claims 15-37. Claims 21-37 are withdrawn from consideration as being drawn to a nonelected invention. Claims 15-37 are canceled without prejudice, and claims 38 and 39 have been added. Therefore, claims 38 and 39 are pending in the application.

Support for claims 38 and 39 can be found throughout the specification, e.g., at page 6, lines 1-26 and in claims 1 and 12 as originally filed. Claims 38 and 39 are in formats similar to those of claims 1 and 2 of the issued parent case (U.S. Patent 6,316,214 (the '214 patent)). No new matter has been introduced by these amendments.

Rejections under 35 U.S.C. 101

Claims 15, 18, and 19 are rejected under 35 U.S.C. 101 for claiming the same invention as that of claims 1-2 of the '214 patent.

According to the Examiner:

The presently elected compound [*sic.* ETM 775] is the same compound as claimed in '214. The elected claims further include compound species ETM 204 and 305 which are not fairly suggested or taught by the prior art. If rewritten in independent form, claim 16 would be allowable (Office Action, page 2, lines 8-12).

Claims 15, 18, and 19 have been canceled thus rendering the rejection of them moot.

Applicants wish to point out that dependent claim 19 is directed to a pharmaceutical composition comprising Ecteinasidin 743 metabolite ETM 305 and a pharmaceutically acceptable diluent, excipient, or carrier. Claim 1 of the '214 patent is directed to substantially pure ETM 775, and claim 2 of the '214 patent is directed to a pharmaceutical composition comprising ETM 775 and a pharmaceutically acceptable carrier, diluent, or excipient.

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Applicants submit that claim 19 is not claiming the same invention as claimed in claims 1 or 2 of the '214 patent. Applicants respectfully request that this rejection not be applied to new claim 39.

Rejections under 35 U.S.C. 112, first paragraph

Claims 15, 17, 18, and 20 are rejected as not enabled. This rejection is moot in view of the cancellation of claims 15, 17, 18, and 20.

Applicants submit that all claims are in condition for allowance.

Enclosed is a \$950 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No.: 14620-017001.

Respectfully submitted,

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